

May 4, 2006

Mr. Jeffrey A. Noble  
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P.O. Box 240  
Broadus, Montana 59317-0240

Re: Attorney General Opinion Requests

Dear Mr. Noble:

You have submitted requests for an opinion by the Attorney General on three questions involving mandatory auto insurance that I have phrased as follows:

1. Pursuant to Mont. Code Ann. § 61-6-303(9), motor vehicles that are owned and registered by non- residents and are in compliance with the motor vehicle liability insurance requirements of the non- resident's home state are exempt from the provisions of §61-6-301 (which generally require Montana drivers to maintain such insurance coverage). Should non-resident drivers be required to maintain liability insurance while driving in Montana if their home state's laws do not require them to do so once they leave their home state?
2. When a vehicle owner has been convicted of a second violation of Mont. Code Ann. § 61-6-301 and the registration on the vehicle has been suspended as required by Mont. Code Ann. § 61-6-304, must the owner procure liability insurance for the vehicle before seeking reinstatement of the license plates and registration if the vehicle remains parked on private property and the owner is unsure whether or when the vehicle will again be operated on a public road?
3. When a law enforcement officer cites a driver during a traffic stop for failure to carry liability insurance, may the officer order the driver to park the vehicle in a safe place and not to drive the vehicle until the driver submits proof that liability insurance is in effect?

Since your questions involve straightforward applications of clear statutory language, we have determined that an informal letter of advice rather than a formal opinion is appropriate in response to your questions.

I.

The answer to your first question requires analysis of the governing statutes in question and the application of the rules of statutory construction. Let me first turn to the statutes.

Montana Code Annotated § 61-6-301 generally requires a person operating a motor vehicle on Montana's highways to have a valid policy of liability insurance unless the person "has been issued a certificate of self insurance under 61-6-103," "has posted an indemnity bond with the department," or "is operating a vehicle exempt under 61-6-303."

Section 303 lists nine categories of vehicles and their drivers that are exempt from mandatory liability coverage. Subsection (9) excludes "a vehicle owned by a nonresident if it is currently registered in the owner's resident jurisdiction and he is in compliance with the motor vehicle insurance requirements, if any, of that jurisdiction."

I assume that your inquiry arises from the important public policy objective of providing insurance coverage to pay for the damages suffered by people who are injured by vehicles driven on the public highways of the state. You have suggested that Oregon law does not require its residents to maintain liability insurance on vehicles registered in the state of Oregon if the vehicle is driven out of state. This raises the possibility that the Oregon driver would be in compliance with the laws of Oregon but would nevertheless be driving on Montana's highways with no liability insurance.

I note that before relieving a driver of the responsibility to maintain liability insurance, Oregon law requires the driver to submit a statement "declaring that the vehicle is continuously not being operated on the highways of the state." Oregon Revised Statutes 806.020(7). Penalties are provided for false statements. The exemption from Oregon's financial responsibility law is not simply triggered by crossing the state line on the way out of state. The mere presence in Montana of a vehicle registered in Oregon that is not insured does not establish compliance with Oregon's financial responsibility law. The vehicle must "continuously" not be driven in Oregon and the owner must have previously filed the required statement. In its absence, the owner would not be in compliance with Oregon law and would not be entitled to claim the exemption provided by Mont. Code Ann. §61-6-303.

For purposes of further discussion I will assume that the owner had filed the statement, was thereby in compliance with Oregon law, and was uninsured while operating in Montana.

You have concluded that in such a case, the individual would be entitled to claim the exemption found in § 61-6-303(9) and could not be prosecuted for violating § 61-6-301. I concur with your judgment.

The intention of the legislature is the “cardinal principle of statutory construction.” Baker Nat’l Ins. Agency v. Montana Dep’t of Revenue, 175 Mont. 9 at 15, 571 P.2d 1156 at 1160. While one can be confident that the spirit of these statutes was to provide for insurance coverage, the legislative intent “must be inferred from the plain meaning of the words contained in the statutes.” Orr v. State, 2004 MT 354, ¶ 24, 324 Mont. 391, 106 P.3d 100. In the construction of the words in the statute, “the office of the judge is simply to ascertain and declare what is in terms or in substance contained therein, not to insert what has been omitted or to omit what has been inserted.” Mont. Code Ann. § 1-2-101.

Applying these principles to this question supports your conclusion. The legislature expressly provided for the exemption defined by Mont. Code Ann. § 61-6-304(9). We cannot add the qualifier that the motorist “must have liability insurance to drive in Montana, even if the state of registration does not require it.” Indeed, it would seem that such a qualifier would directly contravene the purpose of the statute. The legislature alone can make such a change in the law. Montana law does not require a non-resident driver to obtain liability insurance while driving in Montana if the driver is in compliance with the motor vehicle liability insurance requirements of his/her home state, even if the application of the home state results in the driver having no liability insurance while driving in Montana.

## II.

You have posed your second question in the context of your conclusion that vehicles that are parked on private property are not subject to the insurance requirements of Mont. Code Ann. § 61-6-301.

I start by respectfully differing with the above conclusion. The statute requires continuous insurance of a vehicle by its owner if the vehicle is “registered and operated in Montana.” If a vehicle is operable, one must assume that it will be operated. And if operated within the state, even on private property, it must be insured unless it is within a category of exempt vehicles listed in Mont. Code Ann. § 61-6-303. None of the exceptions address a parked vehicle, in operable condition, that when and if it is used, will be used on public roads.

A second conviction of a violation of Mont. Code Ann. § 61-6-301 requires the imposition of the penalties set forth in section -304(2). This requires the surrender of the vehicle registration receipt and license plates. “The receipt and plates may not be

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reinstated until proof of compliance with 61-6-301 is furnished to the department.” You have suggested that this penalty should not be applied to one who is not operating his vehicle on public roads. Aside from the obvious practical difficulties that law enforcement would face from a wrongdoer who asserted such a defense to the penalty, I find nothing in the statute that provides this exemption. As noted above, an operable vehicle parked on private land is nevertheless subject to the mandatory insurance requirements. Even if it were not, the legislature is within its power to impose the proof of compliance requirement as a unique condition precedent to the return of the license plates and registration upon that limited class of individuals that has violated the law two or more times.

I therefore conclude that a driver must obtain insurance coverage for a vehicle when attempting to reinstate his/her registration and license plates under Mont. Code Ann. § 61-6-304(2) following a second conviction of a violation of Mont. Code Ann. § 61-6-301, even where the vehicle is parked on private property.

### III.

A peace officer “is vested by law with a duty to maintain public order and make arrests for offenses while acting within the scope of the person’s authority.” Mont. Code Ann. § 46-1-202(17). Furthermore, under the common law, an officer has the authority to prevent crimes. Soper v. Montgomery County, 294 Md. 331, 336, 449 A.2d 1158, 1161 (1982).

If the defendant has failed to show adequate proof of insurance, then a second or continuing violation of the law will occur if the defendant is permitted to drive away in the uninsured vehicle. Through the exercise of the officer’s power to prevent a further offense, the defendant may be ordered to leave the vehicle at an appropriate location until the mandatory insurance has been procured. The officer may take additional reasonable and lawful steps to prevent a second offense, as he/she may deem necessary at the time.

This letter of advice may not be considered a formal opinion of the Attorney General.

Yours truly,

JON ELLINGSON  
Assistant Attorney General

je/jym